

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

\$247,052.54, et al.,
Defendants,
CODY K. DOBBS,
Claimant.

No. C-05-4798 SC

ORDER DENYING MOTION
TO RESCIND STAY

I. INTRODUCTION

On November 14, 2006, the Court stayed this forfeiture action pursuant to a stipulation of the parties. See Docket No. 21. On March 30, 2007, Claimant Cody Dobbs ("Dobbs" or "Claimant") filed a motion to rescind the stay. See Mot. to Rescind Order Pursuant to 18 U.S.C. § 981(g) Staying the Proceedings, Docket No. 24. Plaintiff, the United States of America ("Government") opposed the motion, and Dobbs replied. See Docket Nos. 34, 35. Dobbs seeks to rescind the agreed-upon stay so that the Court will hear his Motion for Summary Judgment, also filed on March 30, 2007. See

Docket Nos. 24, 27.

Because the conditions warranting the stay have not changed, and because lifting the stay would interfere with a related criminal prosecution, the Court hereby DENIES Claimant's Motion.

II. BACKGROUND

The Government brought a suit for forfeiture against Defendants, \$247,052.54 in funds, \$10,000.00 in currency, 2005 Orange Kawasaki KFX400 ATV, and 2005 Green Kawasaki KFX400 ATV on November 23, 2005. See Compl., Docket No. 1. The Government alleges that Dobbs was involved in the manufacture and sale of controlled substances, and that forfeiture is therefore proper pursuant to 28 U.S.C. § 881(a). Id. ¶¶ 15-20.

Dobbs was arrested and charged with violation of 21 U.S.C. § 846, Conspiracy to Manufacture and Possess with the Intent to Distribute Marijuana, and violation of 21 U.S.C. § 841(a)(1), Manufacture and Possession with Intent to Distribute Marijuana. See Opp'n, Ex. 1. Dobbs was indicted on October 26, 2006. Id.

On November 8, 2006, Dobbs and the Government stipulated to stay this matter pursuant to 18 U.S.C. § 981(g) until the criminal case against Dobbs was resolved.¹ See Docket No. 21. The criminal trial against Dobbs is set to begin on September 4, 2007.

¹Dobbs says he should not be bound by his previous stipulation because he retained new counsel after the parties reached that agreement. Reply, 4 ("Whatever Dobbs prior counsel decided was best for Dobbs in this matter by stipulating to the stay is not relevant to the court's determination."). This argument is baseless. To hold otherwise would allow any civil litigant to abandon an unfavorable stipulation by changing counsel.

1 Opp'n, 2. The criminal trial has been subject to repeated delays;
2 the Government and Dobbs each assert that the other is responsible
3 for the delays. Id.; Nick Decl., 1-2.

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5 **III. DISCUSSION**

6 The Court may stay a forfeiture action upon the motion of
7 either the Government or the claimant, if certain conditions are
8 satisfied. See 18 U.S.C. § 981(g). Where the Government seeks a
9 stay, it must show that civil discovery will "adversely affect the
10 ability of the Government to conduct a related criminal
11 investigation or the prosecution of a related criminal case." 18
12 U.S.C. § 981(g)(1). Where the claimant seeks a stay, he must show
13 that (1) he is the subject of a related criminal investigation or
14 case; (2) that he has standing to assert a claim in the forfeiture
15 action; and (3) that failure to stay the case will burden the
16 claimant's right against self-incrimination in the related
17 criminal investigation or case. See 18 U.S.C. § 981(g)(2).

18 Dobbs argues that because he does not seek any discovery in
19 the civil action, discovery can not adversely affect the criminal
20 prosecution.² See Mot. to Rescind, 5. Dobbs is not the only
21 party that might want discovery in this action, however. The
22 Government seeks and is entitled to conduct discovery. See Opp'n,

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24 ²That Dobbs frames the issue as a question of whether or not
25 the Government can qualify for a stay is disingenuous at best. The
26 Government is not moving for a stay, and need not move for one,
27 because Dobbs already agreed to a stay. Similarly, Dobbs suggests
28 that the Government is not entitled to a continuance of summary
judgment under Rule 56(f). See Mot. to Rescind, 6-8. Because the
case is stayed, there is no properly-filed motion for summary
judgment, and there is nothing to continue.

1 2, 5-6; Fed. R. Civ. P. 56(f) (where affidavits are not
2 sufficient, the Court may allow a party opposing summary judgment
3 to conduct discovery).

4 Moving forward with discovery in this action may have a
5 serious adverse impact on the criminal case against Dobbs. The
6 factual allegations underlying the two cases are very similar.
7 Compare Compl., ¶¶ 7-13, with Indictment, Opp'n, Ex. 1, 1-2. Both
8 relate to the search of Dobbs's property at 750 Bear Pen Canyon
9 and the seizure of approximately 2,300 marijuana plants and 245
10 pounds of marijuana trimmings during that search. To prove that
11 the Defendants in this case are linked to the sale and
12 distribution of marijuana, and therefore subject to forfeiture,
13 the Government will have to prove many of the same facts it will
14 need to prove in the criminal case. The risk of an adverse effect
15 on the criminal case is clear. The Government asserts that it
16 would need to depose certain witnesses - Edward Shield and Wade
17 Trabue - to proceed on its forfeiture claims. See Opp'n, 5. Both
18 are also witnesses with knowledge relevant to the criminal case,
19 and deposing them now would allow Dobbs the opportunity to cross-
20 examine them in advance of trial, potentially exposing the
21 Government's strategy for trial, or requiring them to divulge
22 information related to the criminal case. Dobbs simply ignores
23 this concern. The Government would also require testimonial
24 declarations from law enforcement officers, whose testimony will
25 play a central role in the criminal trial, creating additional
26 risks. See id., 6.

27 The Government also maintains that it requires additional
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1 written discovery in order to oppose Dobbs's summary judgment
2 motion, to prepare its own motion, and to proceed on the merits if
3 the Court does not grant summary judgment. See Opp'n, 4,6.

4 For his part, Dobbs claims that the foregoing discovery is
5 unnecessary and will not help the Government overcome the
6 purportedly undisputed facts on which he rests his summary
7 judgment motion. See Reply, 1-4. To conclude that Dobbs's
8 summary judgment position is so strong that the Government cannot
9 conduct any meaningful discovery to support its opposition would
10 be to evaluate this currently stayed case on the merits. The
11 Court will not indulge Dobbs in this regard. The question now
12 before the Court is not whether the particular discovery the
13 Government seeks is appropriate. Nor is it whether or not the
14 Government can succeed on the merits if the case goes forward.
15 Rather, the only question the Court decides here is whether to
16 lift the stay.

17 Dobbs's reliance on United States v. 20832 Big Rock Drive, 51
18 F.3d 1402, 1411 (9th Cir. 1995) ("Big Rock"), is misplaced. If
19 relevant at all, that case addresses the merits of the forfeiture
20 action, not the propriety of a stay. In Big Rock, the Ninth
21 Circuit addressed two issues: the due process requirements when
22 the government seizes property in a forfeiture action, and the
23 "innocent owner" exclusion from forfeiture, where someone uses
24 drug money to buy an asset without knowing the illicit source of
25 the funds. Id. at 1405-06, 1410-11. Neither issue is relevant.

26 Should the Court agree that the Government is entitled to
27 discovery, Dobbs suggests that a protective order, as authorized
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1 by 18 U.S.C. § 981(g)(3), would address the Government's concerns
2 while allowing him to proceed with his summary judgment motion.
3 See Mot. to Rescind, 6-8. A protective order would only be
4 helpful if the Government were seeking to limit Dobbs's discovery.
5 However, because the discovery the Government desires in the
6 forfeiture action would be harmful to the criminal prosecution,
7 there is no practical way to proceed here without risking an
8 adverse effect on the criminal case.

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10 **IV. CONCLUSION**

11 Dobbs agreed that this case should be stayed pursuant to 18
12 U.S.C. § 981(g). Other than Dobbs's lawyer, nothing has changed
13 since that agreement, and the stay remains appropriate. Lifting
14 the stay in this case could adversely affect the prosecution of
15 the criminal case against Dobbs. For all of the foregoing
16 reasons, the Court DENIES Claimant's Motion to Rescind Order
17 Pursuant to 18 U.S.C. § 981(g) Staying the Proceedings.

18 Because the matter remains stayed until the resolution of the
19 related criminal case, the Court VACATES Dobbs's Motion for
20 Summary Judgment. When the conditions warranting the stay are no
21 longer present, Dobbs may re-notice his motion.

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23 IT IS SO ORDERED.

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25 Dated: July 6, 2007

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27 UNITED STATES DISTRICT JUDGE
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